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WC DOCKET NO. 06-122

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FILED/ACCEPTED

AUG 27 2008

Federal Communications Commission  
Office of the Secretary

August 27, 2008

**Via FedEx**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Petition for Waiver of Wholesale Carrier Services,  
Inc.  
REDACTED VERSION- FOR PUBLIC INSPECTION**

Dear Ms. Dortch:

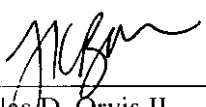
Wholesale Carrier Services, Inc. ("WCS" or "Company"), through its undersigned counsel and pursuant to 5 U.S.C. § 552 and 47 C.F.R. §§ 0.457, 0.459 and 1.731, hereby submit an original and four redacted copies of WCS' Petition for Waiver.

Please note that WCS has transmitted herewith a request for confidential treatment with respect to certain materials filed in the confidential version of this Waiver.

If you have any questions regarding this Waiver Petition or the confidentiality request please contact the undersigned. Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed envelope provided.

Respectfully Submitted,

**Wholesale Carrier Services, Inc.**

By:   
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

06-122

FILED/ACCEPTED

AUG 27 2008

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
Universal Service Contribution Methodology )  
Federal-State Joint Board on Universal Service )  
Petition for Waiver of the Universal )  
Service 45 day revision window to )  
accept the corrected FCC Form 499-Q of )  
Wholesale Carrier Services, Inc. )  
Filer 499 ID 822308 )

**PETITION FOR WAIVER**

Wholesale Carrier Services, Inc. ("WCS"), through this filing seeks a waiver of the 45 day revision window to accept WCS's corrected FCC Form 499-Q. 47 C.F.R. §§1.3, 54.722 (a).

**I. FACTUAL BACKGROUND**

On or about January 15, 2008, WCS filed its Form 499-Q, projecting 1st Quarter 2008 revenue (approximately 16 days early.) Unfortunately, because this filing was prepared while WCS was working on gathering the information for the Form 499-A annual filing, the Form 499-Q filing included annual, rather than quarterly data. On or about March 28, 2008, WCS filed its Form 499-A. As a result of the error on the Form 499-Q, WCS's projected revenue for the first quarter was grossly and obviously overstated. WCS did not discover this error in reporting until it received the first invoice for the First Quarter 2008 contributions on or about April 22, 2008.

On or about April 28, 2008, immediately after discovering the reporting error, WCS attempted to revise its first quarter USF filing to replace the corresponding error and replace the annual data with the quarterly data. This attempt was rejected by the Universal Service

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Administrative Company ("USAC") on June 10, 2008. USAC processed 1st quarter invoices using the erroneous figures. Instead of receiving invoices totaling a quarterly amount of approximately \$[REDACTED], the company instead received an invoice for nearly 400 percent more, or more that \$[REDACTED] for the quarter. Despite this enormous increase, WCS paid the invoices in full. In an attempt to remedy the situation of this overpayment, WCS contacted USAC and was told, among other suggestions, that the money would be returned to them when USAC conducts its annual 499-A/Q true up in the third quarter of 2009, more than a year from the date of the original payments. WCS has paid, without dispute, all USF contributions amounts invoiced in a timely manner and has been compliant in all regards with its USF obligations.

Due to this inadvertent reporting error, WCS's quarterly contribution increased approximately 400%. Such a dramatic increase in USF obligations has caused undue hardship and financial distress on WCS. While WCS will eventually receive a credit for these overpayments in the A/Q true up, however, absent the ability to revise its 499-Q Forms, WCS will not receive this credit for 12 months from this filing, which is as much as 16 months after when it was first paid into the USF system. WCS is a relatively small toll reseller that cannot afford to have significant funds tied up for such a long period of time. Moreover, reliance on the A/Q true up in the third quarter 2009 is an insufficient remedy, as WCS would not be made whole for its overpayment for 16 months. Such a delay is causing, and will continue to cause, undue hardship upon its business.

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### II. REQUEST FOR WAIVER

The Commission may waive its rules for “good cause shown.”<sup>1</sup> “A waiver is fitting if “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”<sup>2</sup> The Commission may also consider “hardship, equity or more effective implementation of overall policy”<sup>3</sup> in determining whether there is cause for a waiver. Good cause exists for a waiver in this case as hardship and equity considerations demand that a waiver be granted to ensure that WCS is not required to contribute more than an “equitable and non-discriminatory” amount.<sup>4</sup> The sum paid in this one quarter in question is equivalent to what WCS generally might pay in a year of USF contribution. Relying on a true up is an insufficient remedy in this instance given the sheer magnitude of the error. Absent a waiver, this carrier would be financially burdened with overpaying for its USF contribution and not receiving its money back for sixteen months due to an inadvertent clerical reporting error.

No issues of noncompliance are raised by this matter. WCS has been and remains compliant and timely with the all of its filing and USF payment obligations. There has not been a non-payment or underpayment of amounts due. The issue is providing WCS an opportunity to correct a costly and clearly evident clerical error in filling out Form 499-Q. WCS took corrective measures as soon as it was aware of the error and seeks the Commission’s action to remedy the error and prevent WCS from being further punished for it. WCS’s full compliance with its USF and filing obligations indicates that no party will be prejudiced by a grant of the relief WCS seeks.

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<sup>1</sup> 47 C.F.R. §1.3. See *In the Matter of Federal-State Joint Board on Universal Service Universal Service Contribution Methodology. Adventure Communications Technology, LLC, Form 499 Filer ID 825749 Request for Review of USAC Rejection Letter and Request for Waiver of USAC 45 Day Revision Deadline*, Order, DA 08-1514, (WCB) Adopted June 26, 2008. (“Adventure”)

<sup>2</sup> *Northeast Cellular Telephone v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990).

<sup>3</sup> *WAIT Radio v. FCC*, 418 F. 2d 1153, 1157 (D.C. Cir. 1969), cert denied, 409 U.S. 1027 (1972)).

<sup>4</sup> 47 U.S.C. §254 (b)(4),(d).

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The extreme difference between the Form 499-Q filed for the 1st quarter 2008 and all previous Form 499-Q filings is clearly incorrect. While USAC did apparently attempt to inquire about the increase of contribution, they apparently did so in a routine email communication that acknowledged the acceptance of the Form 499-Q filing, but provided no notice that the email was also asking a substantive question about the accuracy of the filing. Unfortunately, this email was flagged as a mass commercial email message and was not timely delivered to WCS personnel. As such, WCS was not made aware of this question until after the Form 499-Q revision deadline had passed. While WCS acknowledges that it was its own error that cause the incorrect filing, USAC's lack of more proactive outreach, in the face of clearly inaccurate figures, was an inadequate response. That the company did not note the error in the filing until after the revision deadline had passed is unfortunate, but can be remedied with a waiver of the rule in this instance.

In addition, WCS provides services to recipients of the Rural Health Care program and receives support for services provided under that program. The loss of the current use of this money for the duration of 2008 and the first half of 2009 could cause WCS to curtail or otherwise reduce its ability to provide service, which could negatively affect the Rural Health Care recipients. Similarly, WCS may be limited in its ability to expand its service offerings to Rural Health Care eligible entities. Such a limitation could ultimately harm the goals of the Rural Health Care program.

A waiver in this case would be consistent with Commission precedent where special circumstances exist and the "application of the [rule] would impose a significant hardship."<sup>5</sup> Upon the Commission's use of projected revenues as a contribution base, the Commission granted

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<sup>5</sup> See, e.g. *Request for Review by ABC Cellular Corporation*, Order, 17 FCC Rcd 25192, 25196 (WCB 2002). ("ABC Cellular")

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waivers to companies that would otherwise have faced unjust true-up payments.<sup>6</sup> Indeed, the Commission has granted waivers of the 45 day revision window in similar situations to the present case; where an inadvertent reporting error on a Form 499-Q resulted in overpayments of USF obligations and created undue hardship upon the company.<sup>7</sup> Thus, prior precedent supports a waiver for WCS.<sup>8</sup>

The extended filing period allotted for the Form 499-A, and the revision and true-up periods for the Form 499-Q indicate the Commission's desire to abide by Congress's intent specified in Section 254(d) of the Communications Act of 1934, as amended (the Act) which provides that "every telecommunications carrier that provides interstate telecommunications services shall contribute, on an *equitable* and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."<sup>9</sup>

The purpose of the annual true-up, as stated by the Commission is to "ensure that interstate telecommunications providers contribute appropriate amounts to the Universal Service mechanisms based on quarterly revenue data."<sup>10</sup> Congress and the Commission plainly do not want carriers' contributing excessive or inequitable amounts to the Universal Service Fund. It is important that the Commission and Congressional intent be served by allowing for the opportunity for accurate revisions to be filed and carriers to be assessed correctly.

WCS has a heightened awareness of the flaw in its internal reporting mechanism in this instance and has taken measures so as to prevent such clerical filing errors from occurring again. There is now increased oversight and vigorous review of filings, including Form 499-Q by

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<sup>6</sup> See *Federal-State Joint Board on Universal Service*, Order, 19 FCC Rcd 24049 (WCB 2004); *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 2243 (WCB 2005) ("New Edge Waiver"); *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 14699 (WCB 2005).

<sup>7</sup> See *Aventure and ABC Cellular*.

<sup>8</sup> *New Edge Waiver*, at 2244-45.

<sup>9</sup> 47 U.S.C. 254 (d) (emphasis added).

<sup>10</sup> See *Federal-State Joint Board on Universal Service et al.*, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4824 (2003) ("2003 Order").

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company executives as well as other remedial measures in place to proactively ensure that WCS has correct filings on a going- forward basis.

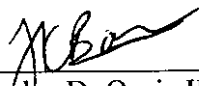
A waiver of the 45 day revision period, in this instance would serve the public interest, and should be granted.

**CONCLUSION**

For the foregoing reasons, WCS requests that the Commission waiver of the 45 day revision window to allow WCS to file revised Form 499-Qs for first quarter of 2008.

Respectfully submitted,

**Wholesale Carrier Services, Inc.**

By:   
\_\_\_\_\_  
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*Counsel for Wholesale Carrier Services, Inc.*

August 27, 2008

**Before the  
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**AFFADAVIT OF CHRIS BARTON  
IN SUPPORT OF PETITION FOR WAIVER**

1. My name is Chris Barton and I am the Chief Executive Officer of Wholesale Carrier Services, Inc. ("WCS").
2. Wholesale Carrier Services, Inc. is a relatively small toll reseller that provides services in numerous states.
3. WCS has been making timely payments of the full amount of its Universal Service Fund ("USF") obligations without dispute and has been consistently compliant with its filing obligations.
4. In concurrently completing the Form 499-Q for the first quarter of 2008 and the Form 499-A for fiscal year 2007, an error was made. The annual financial results were erroneously submitted on the quarterly return filed for the 1st quarter of 2008.
5. This mistake caused WCS's calculated USF payments to dramatically increase WCS' contribution base.



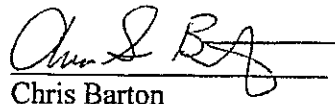
6. A review of WCS's other quarterly filings demonstrates the obvious nature of this error as the inadvertently under reported annual period does not match the sum of the four quarter's accepted filings.

7. The increase in the USF bill is causing undue hardship upon the company and is preventing us from implementing certain business initiatives.

8. The Annual/Quarterly true-up process will not provide adequate relief to WCS. We cannot submit our annual filing until approximately April 1, 2009. This means that we will have overpaid significantly and have to wait sixteen months for true-up to begin. This is clearly too great an amount to be resolved with a system of credits on future payments.

I hereby affirm under penalty of perjury that the above statements are true and correct.

Dated: August 26, 2008  
Coral Springs, Florida

  
Chris Barton